

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 134
Award No. 134

Claimant: F. J. Tabaha

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Transportation Company

STATEMENT
OF CLAIM

1. That the Carrier's decision to suspend Claimant from its service for a period of three (3) working days was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the Collective Bargaining Agreement.
2. That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to reinstate and compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

By letter dated April 6, 1992, the Claimant was notified to attend a formal Investigation to determine his responsibility, if any, in connection with his alleged violation of the following rules:

Rule 607: CONDUCT: Employees must not be:

1. Careless of the safety of themselves or others;

Rule 1.2.19.2: They will be held responsible for the safety, care, maintenance and performance of the machines to which they are assigned. An

immediate report will be made to the proper authority when a machine is out of service or not performing properly. If a safety device is not operating properly the operator will take every precaution for safety. If the machine cannot be operated safely it will be removed from service and reported to the work Equipment Supervisor and District Engineer. They will be governed by instructions of Work Equipment Supervisor or roadway mechanics regarding the maintenance and operation of machines.

On March 12, 1992, in the vicinity of Niles, California, the Claimant was operating a spike driver machine. While operating the hydraulically powered machine, he noticed a leak in the hose connection. Since the hose contained about 1500 lbs pressure, it was necessary to turn off the machine and depressurize the hose by bleeding off some of the hydraulic fluid. Instead, the Claimant attempted to tighten the connection without doing either. He apparently twisted the fitting in the wrong direction causing the leak to become larger. This, combined with the fact there was still pressure in the hose caused the fitting to come loose spraying fluid over the Claimant. In spite of the fact he was wearing safety glasses, some of the fluid got into his eyes, apparently from wiping his eyes with his sleeve.

After the incident, the Claimant went to the hospital to have his eyes treated. According to his statement he missed work the following week.

As the following excerpts from the transcript reveal, the Claimant was familiar with and had operated other hydraulic spike driver machines, although not the Fairmont he was operating on March 12, 1992. Furthermore, his testimony reveals he was aware he should have turned off the motor of the machine before he attempted to make any repairs. According to his testimony:

Question: In other words, you are familiar with how to operate a spike driver?

Answer: Not that one, but the other spike driver, I use to work with that one, but not the Fairmont, I don't know much about that one.

Question: You worked other spike drivers?

Answer: Yes.

Question: Did they work on hydraulic also?

Answer: Yes.

Question: Did you shut the machine off?

Answer: No, I didn't shut the machine off.

Question: Were you aware that you are suppose to turn the machine off when operating it?

Answer: Yes, I guess I was in a hurry; I was too far behind, trying to tighten it.

Question: Do you recall, and I know it has been awhile, do you recall which way you attempted to tighten it?

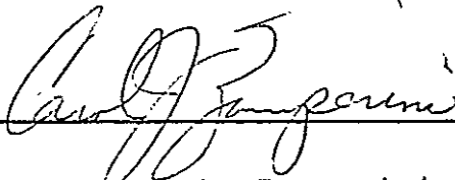
Answer: Yes, but I made a mistake and turned it the wrong way, so it starts spraying a little more; that is why it got on my face, and I took off my glasses; I was wearing coveralls all the time, and I cleaned it with; I didn't have any towel.

Admittedly, there may be some fault on the part of the Carrier for not qualifying the Claimant on the Fairmont Spike Driver machine. However, the mistakes the Claimant made cannot be attributed to his unfamiliarity with this particular machine. In fact, he failed to do things which would have been done on almost any kind of motorized equipment, hydraulic or otherwise, before attempting to make repairs. Namely, turn off the engine or shut down the motor. The Claimant did not lack this knowledge. Therefore, he must be held responsible for not taking the appropriate actions of shutting down his machine and depressurizing the unit. He also knew he was to report the problems to the mechanic, but did not do so until after the incident.

In this case the penalty as issued by the Carrier is reasonable under the circumstances.

AWARD

The Claim is denied.



Carol J. Zamperini
Neutral

Submitted:

July 21, 1992
Denver, Colorado